

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW MEXICO

3  
4 UNITED STATES OF AMERICA

5 vs. No. 1:CV-18-03495-JCH

6 DOUGLAS D. SMITH  
7

8  
9 TRANSCRIPT OF PROCEEDINGS

10 TRIAL ON THE MERITS

11 June 18, 2021

12 Volume 5

13 Pages 813 - 821  
14

15 BEFORE: HONORABLE JUDGE JUDITH HERRERA  
16 UNITED STATES DISTRICT JUDGE  
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19 Proceedings reported by stenotype.

20 Transcript produced by computer-aided  
21 transcription.  
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14 I N D E X

15 PAGE:

16 Certificate of Reporter

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1 (Open court, outside the presence of the  
2 jury.)

3 THE COURT: Please be seated. We are on  
4 the record in USA versus Smith. As you know, we  
5 received a note from the jury that says, "We have a  
6 verdict," and it is dated 6-18-2021 at 10:15 a.m.

7 Is everyone ready for the jury to come up?

8 MS. WILSON: Yes, Your Honor.

9 Thank you.

10 MR. ELSENHEIMER: Yes, Your Honor.

11 (A recess was taken.)

12 (Whereupon the following proceedings were  
13 held in Open Court.)

14 (Whereupon the jury entered the  
15 courtroom.)

16 THE COURT: Please be seated. Good  
17 morning ladies and gentlemen of the jury. I have  
18 received a note that says you have a verdict; is  
19 that correct?

20 FOREPERSON: Yes, Your Honor.

21 THE COURT: All right. So if you would  
22 please hand the verdict envelope to the Court  
23 Security Officer.

24 FOREPERSON: (Complies.)

25 THE COURT: All right. So if you would,

1 Mr. Smith, Counsel, please stand.

2 The verdict form reads as follows: We,  
3 the jury, find the defendant, Douglas D. Smith, not  
4 guilty of second-degree murder as charged in the  
5 Indictment.

6 We, the jury, find the defendant, Douglas  
7 D. Smith, guilty of involuntary manslaughter, a  
8 lesser-included offense of the charge in the  
9 Indictment.

10 Dated this 18th day of June 2021, and  
11 signed by the foreperson.

12 Is there anything further before I dismiss  
13 the jury?

14 MR. ELSENHEIMER: May we poll the jury,  
15 Your Honor?

16 THE COURT: Yes. You can be seated.

17 So the defendant has requested that I poll  
18 the jury. And so what this means is I am going to  
19 ask each of you separately in open court if the  
20 verdict that I read here in open court is your  
21 verdict.

22 So I will start front row, far left.

23 Ms. Sanchez, is this verdict your verdict?

24 JUROR: Yes.

25 THE COURT: Mr. Stevenson?

1 JUROR: Yes, Your Honor.

2 THE COURT: All right. Mr. McBrayer?

3 JUROR: Yes, Your Honor.

4 THE COURT: And then I will go to the next  
5 row.

6 Mr. Mardo?

7 JUROR: Yes, Your Honor.

8 THE COURT: Ms. LeFrak?

9 JUROR: Yes, Your Honor.

10 THE COURT: Mr. Kistler?

11 JUROR: Yes, Your Honor.

12 THE COURT: Ms. Herson?

13 JUROR: Yes, Your Honor.

14 THE COURT: Ms. Foster?

15 JUROR: Yes, Your Honor.

16 THE COURT: And now coming to the front,  
17 we will start on the right.

18 Ms. Romero?

19 JUROR: Yes, Your Honor.

20 THE COURT: Ms. Crandall?

21 JUROR: Yes, Your Honor.

22 THE COURT: Ms. Nixon?

23 JUROR: Yes, Your Honor.

24 THE COURT: Mr. Begay?

25 JUROR: Yes, Your Honor.

1 THE COURT: All right. Thank you.

2 Is there anything further?

3 MR. ELSENHEIMER: No, Your Honor.

4 Thank you.

5 THE COURT: Anything from the Government?

6 MS. WILSON: No, Your Honor.

7 Thank you.

8 THE COURT: All right. So ladies and  
9 gentlemen of the jury, that concludes the work that  
10 you have done on this case.

11 So I want to take a moment to thank you  
12 for the job you did. I think that it is, it was  
13 very clear during the course of the trial that  
14 you-all were attentive and you took your oath  
15 seriously, and I just want to let you know that I  
16 appreciate what you have done in service to the  
17 judiciary.

18 I have told you repeatedly that you could  
19 not discuss this case with anyone, so that no longer  
20 applies. So you can feel free to discuss it or not  
21 discuss it as you wish. And I do not know whether  
22 the attorneys will contact any of you.

23 It is not uncommon for attorneys to  
24 contact members of the jury after the trial is  
25 concluded to learn about things that they did,

1 things that they could have done differently, things  
2 of that nature. Again, you don't have to talk to  
3 them if you don't want to. If you want to talk to  
4 them, I am sure they would benefit from whatever  
5 advice you might have for them. I know sometimes  
6 jurors are not shy about critiquing arguments made  
7 or how an attorney presented a case, things like  
8 that.

9           It is entirely up to you, but don't feel  
10 like they are doing something wrong if they try to  
11 contact you to ask questions about the case, that is  
12 fine. But, again, don't be shy about saying no, if  
13 you would rather not.

14           The last thing I want to say is I would  
15 enjoy visiting with you downstairs in the jury room  
16 for just a moment if you have time. It is not  
17 required. I always enjoy visiting with jurors after  
18 the trial in a less formal setting. I mean  
19 oftentimes it is in the jury room, back in the  
20 pre-pandemic days when we could get together in  
21 closer spaces. I would enjoy going downstairs and  
22 visiting with you in the jury assembly room, if you  
23 have time. I know you have given a lot of your time  
24 already. If you are there, I will see you and if  
25 you are not there, thank you again for your service

1 and you are now excused. Your service is  
2 discharged.

3 Please rise for the jury, and I will be  
4 down to talk to whoever can remain in just a moment.

5 (Whereupon the jury exited the courtroom.)

6 THE COURT: All right. Anything further?

7 MS. WILSON: No, Your Honor.

8 Thank you.

9 THE COURT: All right. Thank you. We'll  
10 be in recess. I told you yesterday that you-all did  
11 a good job, and I really meant it. I felt like you  
12 were efficient, you were cordial with one another,  
13 things went smoothly, so I do appreciate that.

14 MR. ELSENHEIMER: Certainly, Your Honor.

15 Thank you. Have a nice weekend.

16 (Proceedings concluded at 11:04 a.m.)  
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